No. 83-1090

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1983

THE PAINTERS AND DECORATORS JOINT COMMITTEE EAST BAY COUNTIES, INC.
Petitioner,

vs.

THE PAINTING AND DECORATING CONTRACTORS OF SACRAMENTO, INC., a California non-profit corporation,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

ROBERT C. NICHOLAS
COUNSEL OF RECORD
HAAS & NAJARIAN
530 Jackson Street
Suite 303
San Francisco, CA 94133
Telephone: (415) 788-6330
Attorneys for Respondent

QUESTION PRESENTED

Does a District Court, after expressly finding that a joint labor-management committee ("joint committee") did not act as an adjudicatory body under a collective bargaining contract which contained no arbitration/grievance procedure, have jurisdiction under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a) to determine whether the acts of the joint committee were in breach of the contract?

Parties Below and Affiliates of Respondent

Pursuant to Supreme Court Rule 28.1, Respondent states that although a corporation there are no parent companies, subsidiaries or affiliates.

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The Painting and Decorating Contractors Association of Sacramento, Inc., a California non-profit corporation (hereinafter "Sacramento Association"), respectfully submits this brief in opposition to the petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit filed herein by the Painters and Decorators Joint Committee of the East Bay Counties, Inc. (hereinafter "Joint Committee").

I

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 707 F.2d 1067 (9th Cir. 1983) (Appendix A of Petition). The opinion of the Court of Appeals denying Petitioner's Petition for Rehearing and rejecting Petitioner's Suggestion for Rehearing en banc is reported at 717 F.2d 1293 (9th Cir. 1983) (Appendix B of Petition). The preliminary injunction granted by the Northern District Court of California from which Petitioner's appeal was originally taken is found at Appendix C of the Petition.

II

JURISDICTION

The jurisdictional requisites are accurately set forth in the Petition.

III

STATUTE INVOLVED

The pertinent statute involved is Section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), which provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Chapter, or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

IV

STATEMENT OF THE CASE

The Parties

Respondent is a multi-employer trade group consisting of painting and decorating

contractors in a six-county area of Northern California. Respondent and two other multi-employer trade groups, the Painting and Decorating Contractors Association of Napa-Solano Counties, Inc. (hereinafter "Napa-Solano Association") and the Painting and Decorating Contractors of the East Bay Counties, Inc. (hereinafter "East Bay Association"), are and at all times relevant to this action were signatories to a collective bargaining agreement (hereinafter "the Agreement") with the District Council of Painters No. 16 (hereinafter "District Council").

The Agreement provides for the establishment of the Joint Committee to, among other things, administer and enforce the Agreement. The Joint committee is a California non-profit corporation, consisting of two representatives from each of the three signatory employer associations and representatives from the District Council. One of the primary functions of the Joint Committee is to issue shop cards to employers indicating that the employer is a party to the Agreement and is thus observing the terms and conditions thereof.

Employers who are members of one of the three signatory employer associations (including at all times the Sacramento Association) are considered "member signatories" for purposes of receiving a shop card and are charged Fifty Dollars ($50.00) per year for their shop card. However, the Agreement does allow employers who are not members of one of the three signatory employer associations to become parties to the Agreement and to obtain a shop card. Such employers are designated by the Agreement as "non-member signatories" and in order to obtain a shop card must sign a copy of the Agreement and pay the shop card fee of Fifty Dollars ($50.00) per year in addition to the equivalent amount of yearly chapter dues paid by members of one of the three signatory employer associations in the area in which the employer does business.

From 1968 to the present, the employer-members of the Sacramento Association have been, themselves, parties to the successive bargaining agreements by virtue of their membership in the Sacramento Association. These employer-members have,

accordingly, been issued shop cards by the joint committee upon payment of the Fifty Dollar ($50.00) shop card fee established in the Agreement.

The Painting and Decorating Contractors of California, Inc., (the "State Council"), is a trade association consisting of employers in the painting and decorating trade throughout California. The State Council is not and never was a party to the Agreement.

The Dispute

On January 22, 1982, the Sacramento Association, by a majority vote of its employer-members, decided to withdraw its membership in the State Council. In retaliation for this action, the State Council and later the joint committee launched a campaign to cause the employer-members of the Sacramento Association to terminate their membership in that organization.

In April, 1982, the State Council and the Napa-Solano Association wrote to the employer-members of the Sacramento Association indicating that because the Association had withdrawn from the State

Council, all of the members of the Sacramento Association had to rescind the action taken by their association, affiliate with the Napa-Solano Association (whose territory had just unilaterally been expanded to include the area of the Sacramento Association), or accept the status of a non-member signatory under the Agreement. Also, in April, 1982, the joint committee denied the two representatives from the Sacramento Association participation in the regular monthly meetings of the committee, a right conferred by the Agreement. Further the Joint Committee advised the employer-members of the Sacramento Association that unless they joined the Napa-Solano Association they would be required to pay for renewal of their shop cards Seven Hundred Fifty Dollars ($750.00) (the Fifty Dollar shop card fee plus an additional Seven Hundred Dollar ($700.00) membership charge).

The Joint Committee took this action even though the Agreement does not contain any provision which requires the three signatory employer associations to affiliate with the State Council as a condition

to enjoy the benefits of the Agreement and signatory employer status.

The District Court Action

On June 15, 1982, the Sacramento Association filed suit in the Northern District of California under Section 301 of the Labor Management Relations Act, 29 U.S.C. ¶185, naming the joint committee, the District Council, the Napa-Solano Association, the East Bay Association and the State Council as defendants.

The gravamen of the complaint is that there is nothing in the Agreement which conditions member-signatory status on being affiliated with the State Council and that the Joint Committee breached the Agreement by refusing to renew the shop cards of employer-members upon payment by them of the fifty dollar ($50.00) shop card fee, and by denying representatives of the Sacramento Association their participatory rights on the Committee

On July 19, 1982, the District Court granted the Sacramento Association's request for preliminary injunctive relief in order to maintain the status quo as it existed since 1968 and enjoined the Joint

Committee from requiring the employer-members of the Sacramento Association to pay Seven Hundred Fifty Dollars ($750.00) for renewal of the shop cards for the period July 1, 1982 through June 30, 1983, and also enjoined the Joint Committee from refusing to allow the Sacramento Association's two delegates from participating as voting members in the Joint Committee.

The Express Findings of the District Court

The District Court made certain express findings relevant to Petitioner's action before this Court, namely, that Respondent's action did not involve a labor dispute within the meaning of the Norris-LaGuardia Act, 29 U.S.C. §101, et.seq., and that there was no grievance arbitration procedure contained in the Agreement relating to the dispute. There was no evidence presented by any of the parties before the courts below that the Joint Committee in taking the action described herein acted as an adjudicatory body within the framework of a grievance or arbitration procedure. In fact, the Joint Committee did not perform in such a capacity, did not arbitrate any dispute and did

not adjudicate any facts.

V

REASONS WHY THE PETITION SHOULD BE DENIED

All Of The Decisions Cited By Petitioner Are Factually Distinguishable And Therefore Create No Conflict Among The Circuits On An Issue Of Law

The issue in the present case is uniquely narrow and arises out of a strictly parochial dispute involving parties to a collective bargaining contract, and does not involve significant legal issues of any importance to labor or management within the area of federal labor law. Moreover, the case does not in any sense broadly concern the meaning of Section 301, nor does it involve any significant questions concerning the jurisdiction of District Courts under that section.

Petitioner, however, has strained to fabricate what it claims to be a significant issue involving conflicting federal labor law policies. Petitioner for the first time advances the argument that the Joint Committee acted "as an adjudicatory body, just like an arbitration panel" (Petitioner's brief, page 6), and is thus somehow not subject to actions brought

under Section 301. Petitioner makes this argument even though there was absolutely no evidence before the courts below that the Joint Committee acted as an adjudicatory body.

In fact, in its opposition to Respondent's application for preliminary injunctive relief before the District Court, Petitioner argued that Respondent failed to exhaust a contractual grievance procedure by failing to take its dispute to the Joint Committee for arbitration. The District Court expressly found that the Agreement did not contain an arbitration/grievance procedure clause applicable to the dispute. This express finding by the District Court was upheld on appeal by the Ninth Circuit. In spite of these findings, Petitioner nevertheless now argues that the Joint Committee acted as an adjudicatory body, contrary to the position which it took in the courts below. (Clearly, the contractual obligation of the Joint Committee to issue cards is neither an arbitral nor an adjudicatory function).

Based upon the erroneous factual premise that the Joint Committee acted as

an "arbitrator" or as an adjudicatory body, Petitioner attempts to manufacture a conflict by arguing that this Court has promoted the arbitral process, while at the same time, it has limited Section 301 suits to "parties" to collective bargaining agreements. Accordingly, Petitioner argues that Section 301 jurisdiction should not be extended to non-signatories performing arbitral functions. This argument has no application whatsoever to this case and raises a "straw man" not present here. As demonstrated above, the Joint Committee in this case was not performing an adjudicatory or arbitral function in connection with the matters in dispute.

The cases cited by Petitioner, Teamsters Local No. 30 v. Helms Express, Inc., 591 F.2d 211 (3d Cir. 1979) and Ramsey v. Signal Delivery Service, Inc., 631 F.2d 1210 (5th Cir. 1980), are factually and legally distinguishable from the instant case and pose no conflict.

In Teamsters Local No. 30, supra, the complaint brought by the union against the Joint Committee was not for breach of the collective bargaining contract against the

party charged with violating it. Instead, it was an action brought by the union and employee against the committee to set aside an arbitration award rendered by the Joint Committee which the parties had agreed would be final and binding. The committee in that case was created and designed to arbitrate disputes which could not be settled under the contract's elaborate and detailed grievance procedure. The committee was thus an adjudicatory body. The union's and the employee's suit in district court to set aside the final arbitration award was based upon the ground that the committee had breached its duty of fair representation. However, the appellate court found that the committee did not owe a duty of fair representation, since it was a quasi-judicial body, and that the dispute was not one between the parties to the collective bargaining contract. Instead, the court found that it was a dispute between the union and an arbitral body which had performed an act consistent with the collective bargaining contract.

In the instant case, however, the Joint Committee itself breached its

obligations under the collective bargaining contract. The Committee was not acting as a neutral arbiter in refusing to issue the shop cards; instead it breached its contract-created obligation by refusing to do so. See Wilkes-Barre Publishing Company v. Newspaper Guild Local 120, infra.

Moreover, in Teamsters Local No. 30, supra, the union and the employee only filed suit against the Joint Committee. This again is in contrast to the instant case, where Respondent's complaint was filed against all of the signatory parties to the contract for declaratory relief as to each party's rights and obligations under the Agreement, including the rights and obligations of the Joint Committee.

Likewise, Ramsey v. Signal Delivery Service, Inc., supra, is also factually distinguishable from the instant case. There, the plaintiff employees merely alleged that the defendants, including the Joint Committee, conspired to wrongfully discharge them. The district court granted the defendants' motion to dismiss because, among other reasons, it was unopposed. In upholding the lower court, the Fifth

Circuit held that the dismissal was proper as to the Joint Committee on the ground that it was not a proper and legal entity (631 F.2d at 1212). While there were no facts stated in that case to indicate precisely the composition, purpose or role of the Joint Committee, it is clearly distinguishable from the instant case for the reasons stated. In the case before the court, the Joint Committee is a legal entity, a California non-profit corporation, and was intricately bound up with the administration and enforcement of the Agreement.

All of the other cases cited by Petitioner in support of its position that Section 301 jurisdiction cannot be extended to joint committees who are not themselves signatories to the agreements alleged to have been breached are inapposite to the facts of the instant case. As the Ninth Circuit in its opinion below pointed out at 707 F.2d 1071, fn. 3:

> "Despite some broad language in those cases stating that non-signatories to the allegedly breached contract are never

> appropriate parties to a Section 301(a) action, the non-signatory parties there were dismissed because the determination of their liability was not focused upon nor governed by the terms of the contract alleged to have been breached, a jurisdictional prerequisite of Section 301(a). Here, since the question of the joint committee's liability is to be determined by the District Court's interpretation of the agreement, the present case is clearly factually distinguishable from the cases cited above, and thus the reasoning behind those decisions is inapposite." (emphasis supplied)

In light of the foregoing, Petitioner has not demonstrated that there is a conflict among the circuits caused by the decision below, and has failed to articulate any significant legal issue warranting this Court's attention.

This Court Has Already Decided The Issue Raised By the Petition In A Manner Consistent With The Opinion Of The Courts Below

Section 301(a) confers broad subject matter jurisdiction to federal courts where the nature of the action is for violation of a collective bargaining contract between an employer and a labor organization representing employees in an industry affecting commerce. There is no requirement in the statute itself or elsewhere that the parties to a federal court action under Section 301(a) must be limited only to the signatory parties to the contracts alleged to have been breached.

This Court has declared that cases involving breach of collective bargaining contracts must be decided in accordance with a uniform body of federal statutory and common law. See, for example, Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957); Local 174, Teamsters, Chauffers, Warehousemen & Workers of America v. Lucas Flour Company, 369 U.S. 95 (1962); and Smith v. Evening News Association, 371 U.S. 195 (1962), where it was held at 371 U.S. 199, 200:

"Textile Workers v. Lincoln Mills, 353 U.S. 448, of course, has long since settled that §301 has substantive content and that Congress has directed the courts to formulate and apply federal law to suits for violation of collective bargaining contracts. There is no constitutional difficulty and §301 is not to be given a narrow reading. . .

"The same considerations foreclose respondent's reading of §301 to exclude all suits brought by employees instead of unions. The word 'between' it suggests, refers to 'suits' not 'contracts,' and therefore only suits between unions and employers are within the purview of §301. According to this argument, suits by employees for breach of a collective bargaining contract would not arise under §301 and would be governed by state law, if not pre-empted. . . Neither the language and structure of §301 nor its legislative history requires or persuasively

> supports this restrictive interpretation. . ." (emphasis supplied)

Consistent with this Court's decisions, the Ninth Circuit in Rehmar v. Smith, 555 F.2d 1362 (9th Cir. 1976), held at 1366:

> "Section 301 jurisdiction is not dependent upon the parties to the suit but rather the nature of the subject matter of the action. Jurisdiction exists as long as the suit is for violation of a contract between a union and an employer even if neither party is a union or an employer. Alvarez v. Erickson, 514 F.2d 156, 162 (9th Cir.), cert. denied 423 U.S. 874 (1975); see, Smith v. Evening News Association, 371 U.S. 195, 200-201."

In Rehmar, supra, a widow of a union member and a trustee of the pension fund were held to be proper parties under §301, although neither was a signatory to the underlying collective bargaining agreement.

See also, Stelling v. International Brotherhood of Electrical Workers, etc., 587 F.2d 1379 (9th Cir. 1978), and Wilkes-Barre Publishing Company v. Newspaper Guild Local 120, 647 F.2d 372 (3d Cir. 1981), cert. denied, 454 U.S. 1143, 102 S.Ct. 1003, 71 L.Ed. 295 (1982), where the court stated that so long as the obligation sought to be enforced has its source in the provisions of the collective bargaining agreement, remedies for its enforcement must be available under §301(a) in suits other than on the contract itself and against the parties thereto.

The signatory parties to the Agreement in this case contractually agreed to create the Joint Committee. Since the parties to the agreement administered and enforced the contract through the Joint Committee, itself a creature of the Agreement, it is unthinkable that the Joint Committee is not a proper party under Section 301. Though the Joint Committee may not be a "signatory" to the collective bargaining contract in terms of not having actually signed its name to the Agreement, it certainly has many, if not all, of the

attributes of a signatory party, and its rights and responsibilities were defined and limited by the Agreement.

VI

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be summarily denied. In this case the Joint Committee was not acting as an arbitral or adjudicatory body, and did in fact breach its obligations under the collective bargaining agreement. Accordingly, the cases cited by Petitioner offer no support for its position. Moreover, there is no real dispute among the circuits and the issue involved herein is a narrow one, not involving significant issues of federal labor law.

DATED: March 2, 1984

Respectfully submitted,

By Robert C. Nicholas
ROBERT C. NICHOLAS
HAAS & NAJARIAN
Attorneys for Respondent